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CITY OF RIO VISTA CITY COUNCIL

NATALIE RAFFERTY,  
Appellant,  
v.  
CITY OF RIO VISTA,  
Respondent.

CSMCS Case No.: ARB-18-0247  
FINAL DECISION OF THE CITY COUNCIL

The City of Rio Vista (“City”) Police Department (“RVPD”) hired Natalie Rafferty as a Police Officer in 2016. At all relevant times, Officer Rafferty was a member of the Rio Vista Police Officers Association (“RVPOA”). On November 28, 2018, former Police Chief Dan Dailey issued Officer Rafferty a memorandum imposing a three-shift suspension without pay for her misconduct relating to a June 16, 2018 encounter with a citizen named Charles Threadgill (“Threadgill Incident”). Officer Rafferty appealed the suspension pursuant to Article XIX of the Memorandum of Understanding (“MOU”) between the City and the RVPOA.

On March 1, 2019, Chief Dailey issued Officer Rafferty a memorandum terminating her employment on the same date. The termination resulted from misconduct relating to the September 30, 2018 arrest of Kathryn Jenks (“Jenks Incident”). Officer Rafferty appealed the decision to terminate her employment pursuant to Article XIX of the MOU.

The City and Officer Rafferty agreed to consolidate the appeals and have them heard by the same arbitrator. Through an alternating strike procedure, Daniel Saling was designated to hear

1 the appeals. Douglas Foley of Rains Lucia Stern St. Phalle & Silver represented Officer Rafferty.  
2 David Tyra of Kronick Moskovitz Tiedemann & Girard represented the City. Over the course of  
3 four non-consecutive days, the parties introduced evidence and called witnesses. On May 5, 2020,  
4 Arbitrator Saling issued an Opinion and Advisory Award (“Decision”) upholding the three-shift  
5 suspension without pay, but overturning the termination, finding no just cause to support the  
6 termination decision. Pursuant to Article XIX of the MOU, Arbitrator Saling’s Decision was  
7 advisory to the City Council.

8 On June 25, 2020, the City Council permitted the parties to present statements to the  
9 Council regarding whether the Council should accept, modify or reject Arbitrator Saling’s  
10 Decision. The Council has reviewed the evidence and transcripts from the Arbitration, and  
11 considered Arbitrator’s Saling’s advisory Decision as well as the parties’ closing briefs and  
12 statements to Council. After deliberating in closed session on June 25 and 29, and July 7, 2020,  
13 the Council has decided the following:

- 14 1. The three-shift, unpaid suspension resulting from the Threadgill Incident is upheld;
- 15 2. Just cause exists for a 15-shift, unpaid suspension, and removal of Field Training  
16 Officer (“FTO”) and Officer in Charge duties, for Officer Rafferty’s conduct related to  
17 the Jenks Incident;
- 18 3. Officer Rafferty shall be reinstated as a RVPD Police Officer, effective March 1, 2019  
19 through the date the final RVPD officer was laid off from City employment. She shall  
20 receive all wages and benefits due during that period, less pay for 15 shifts, and less  
21 any incentive pays for FTO and Officer in Charge duties during that period.

22 In making its decision, the Council did not rely upon any evidence that was not presented  
23 during the Arbitration. Based on the above, the Council modifies Arbitrator Saling’s advisory  
24 Decision as explained below.

25 **I. FACTUAL SUMMARY**

26 At the time of the 2019 Arbitration, Officer Rafferty had worked for the RVPD for  
27 approximately three years. (Reporter’s Transcript (“RT”) 738:11-13.)

28 **A. THREADGILL INCIDENT**



1 On June 16, 2018, Officer Rafferty and Officer Man Ly stopped Charles Threadgill at  
2 approximately 3:00 a.m. for riding his bike without a headlight. (RT 804:14-19.) At the time,  
3 Officer Rafferty was Officer Ly's FTO. (RT 739:7-8.) Sergeant Thomas Tom subsequently  
4 arrived as cover. (RT 216:7-9.) During the stop, Officer Ly found a dagger in Threadgill's  
5 backpack. (RT 739:24-740:4.) Rafferty knew Threadgill was on Post Release Community  
6 Supervision stemming from felony domestic violence and not supposed to have the dagger in his  
7 possession. (RT 804:25-805:4; 815:8-9.) Nonetheless, she opted to release Threadgill with a  
8 warning and direction to place the dagger in storage. (RT 811:4-812:16.) She was unaware that  
9 Sergeant Tom had taken the dagger and left in his patrol car. (RT 740:5-10.) Upon returning to  
10 the station, Officer Rafferty discovered that Sergeant Tom had brought the dagger to the station.  
11 She then had Officer Ly return the dagger to Threadgill's girlfriend so that she could return it to  
12 Threadgill. (RT 741:13-742:4; 742:19-743:1.) The next day, Threadgill committed an act of  
13 domestic violence against his girlfriend and vandalized her car. (City Ex. 19, p. 2.)

#### 14 **B. JENKS INCIDENT**

15 On the morning of September 30, 2018, Officers Rafferty and Ly responded to a call from  
16 Kathryn Jenks' residence. Jenks had called 911 and reported that her car alarm had been going  
17 off, but had stopped. Office Rafferty knew that Jenks had called multiple times recently for non-  
18 emergencies. (RT 744:25-745:4, 749:14-21.) Officers Rafferty and Ly had discussed prior calls  
19 from Jenks and determined that, if they were called to her house and there was no emergency,  
20 they would arrest her for abusing 911. (RT 621:21-622:3, 751:10-752:6.) Officers Rafferty and  
21 Ly determined that Jenks' call on September 30th was not an emergency and did not warrant a  
22 law-enforcement response. Jenks admitted making the call, and Officer Ly arrested her. When  
23 Officer Ly attempted to handcuff Jenks, she resisted by dropping to the ground, kicking and  
24 attempting to bite Officers Rafferty and Ly. Jenks' boyfriend, David O'Reilly, told the officers to  
25 leave Jenks alone and would not go back inside the house. Jenks continued to resist the arrest.  
26 During the struggle, Officer Rafferty's K9 was unintentionally released and bit Jenks' arm,  
27 resulting in a large flesh wound that required stitches.

28 Although Officer Ly arrested Jenks, Officer Rafferty prepared an Arrest and Detention

1 (“A&D”) form. She claimed Officer Ly would review the form and use it at the jail when booking  
2 Jenks.

3 Officers Ly and Rafferty began writing their incident reports at the station after Jenks was  
4 booked into jail. The Officers were told they could go home to sleep and finish their narratives  
5 from home or back at the station. Officer Ly submitted his report so that it would be available for  
6 review in the event the District Attorney’s office wanted to make a filing decision. When Officer  
7 Rafferty woke up, she received an email from Officer Ly with an attached Word document  
8 containing his report. She edited the report and emailed the revised version to Officer Ly. Officer  
9 Ly accepted the revisions and pasted them into his report when he returned to work.

10 Chief Dailey and Commander Tassone did not believe Officer Rafferty’s and Lee’s  
11 reports matched their body camera footage. Tassone instructed Sgt. Lisa McDowell to tell them to  
12 review the reports and the video to check for accuracy. Office Rafferty did not revise her report.  
13 The RVPD then initiated an investigation regarding the incident and subsequent reports. The City  
14 retained outside, third-party investigator Mark Siemens to investigate. On December 11, 2018,  
15 Mr. Siemens issued his report.

## 16 **II. PROCEDURAL HISTORY**

### 17 **A. THREADGILL INCIDENT**

18 On June 19, 2018, the RVPD commenced an internal affairs investigation regarding the  
19 Threadgill incident (18-IA-006). Based on the IA, which was submitted as an exhibit during the  
20 Arbitration, the RVPD issued a Notice of Intent to Impose Adverse Action on October 2, 2018.  
21 (City Ex. 19.) The Notice of Intent recommended a three-shift, unpaid suspension, and removal  
22 of Officer Rafferty’s FTO and Officer in Charge duties.

23 Officer Rafferty exercised her right to pre-disciplinary *Skelly* review and submitted a  
24 written response to the Notice of Intent on or about October 9, 2018. City Manager Rob Hickey  
25 served as *Skelly* officer and issued his decision on November 26, 2018. Mr. Hickey upheld the  
26 suspension, but rejected the recommendation to remove the FTO and Officer in Charge duties.

27 On November 28, 2018, Chief Dailey issued an Imposition of Adverse Action, imposing  
28 the three-shift unpaid suspension. The three-shift unpaid suspension was based on the



1 determination that Officer Rafferty's conduct violated City of Rio Vista Amended Personnel  
2 Rules and Regulations, Rule XV, Section 2:

- 3 (a) Malfeasance, misconduct, incompetence, inefficiency, or for failure to  
4 reasonably perform duties of his or her position or to observe the established  
5 rules and regulations in relation there to, or to cooperate reasonably with  
supervisors or fellow employees.

6 **B. JENKS INCIDENT**

7 On January 16, 2019, Chief Dailey issued a Notice of Intent to Impose Adverse Action,  
8 recommending termination of Officer Rafferty's employment. On February 20, 2019, Officer  
9 Rafferty received a *Skelly* conference, at which she was able to respond to the charges against her.  
10 After the *Skelly* conference, Mr. Hickey issued his decision to uphold the termination decision.  
11 On March 1, 2019, Chief Daily issued an Imposition of Adverse Action, imposing termination of  
12 Officer Rafferty's employment, effective the same day. The Imposition of Adverse Action states  
13 that Officer Rafferty's conduct violated City of Rio Vista Amended Personnel Rules and  
14 Regulations, Rule XV, Section 2:

- 15 (a) Malfeasance, misconduct, incompetence, inefficiency, or for failure to  
16 reasonably perform duties of his or her position or to observe the established  
17 rules and regulations in relation there to, or to cooperate reasonably with  
supervisors or fellow employees.
- 18 (b) Malfeasance and misconduct shall be deemed to include, for the purposes  
19 of this section, but shall not be construed to be limited to, the following acts  
or commissions:
- 20 (5) Insubordination by refusal or willful failure to obey any lawful and  
21 reasonable order or directive made and given by any superior  
officer.
- 22 (6) Dishonesty, by any willful misuse or misappropriation or attempted  
23 misuse or misappropriation of public funds or public property, by  
24 the rendering of any willfully false statement, or report to the City  
25 or to any Superior Officer, or the willful omission to report  
information or to disclose facts which the duties of the position  
require to be reported or disclosed.

26 **C. ADVISORY DECISION AND APPEAL**

27 Officer Rafferty appealed RVPD's decision to impose a three-shift suspension and  
28 termination pursuant to Article XIX of the MOU. The parties agreed to consolidate the appeals.

1 The appeals were heard by Arbitrator Saling over the course of four days: September 2 and 3,  
2 2019, and December 2 and 17, 2019. On May 5, 2020, Arbitrator Saling issued his Decision. The  
3 City received the Decision on May 8, 2020, and it was provided to the Council on May 29, 2020.

4 On June 18, 2020, Officer Rafferty submitted a written request to have the Council  
5 consider whether to accept, modify, or reject the Decision in open session. On June 25, 2020, the  
6 Council proceeded with open session, at which the parties presented their statements. The Council  
7 reviewed all material the parties requested to be reviewed, including the parties' closing briefs to  
8 Arbitrator Saling. No other objections were raised during the open session meeting. The parties  
9 stipulated that the Council could have until on or before July 7, 2020 to issue its decision.

10 On June 4, 2020, special counsel for the City Council, Jesse Maddox, issued a written  
11 opinion regarding Councilmember Roos' common law conflict of interest and left it to him to  
12 recuse himself from the proceedings. Officer Rafferty submitted a written objection to excluding  
13 Councilmember Roos. Councilmember Roos retained his own counsel, Paul Boylan, who  
14 communicated his disagreement with Mr. Maddox's opinion. Neither special counsel for the  
15 Council nor the other four Councilmembers excluded Councilmember Roos from the  
16 proceedings. Nonetheless, Councilmember Roos chose not to attend or participate.

### 17 **III. CITY COUNCIL'S DECISION**

#### 18 **A. THE COUNCIL ACCEPTS ARBITRATOR SALING'S** 19 **RECOMMENDATION TO UPHOLD THE THREE-SHIFT SUSPENSION**

20 During the parties' June 25, 2020 presentations to the Council, both parties stated that  
21 they were not challenging Arbitrator Saling's Decision regarding the three-shift unpaid  
22 suspension for Officer Rafferty's misconduct related to the Threadgill Incident. The Council  
23 agrees with Arbitrator Saling that the City proved by a preponderance of the evidence that just  
24 cause exists for discipline and that a three-shift, unpaid suspension is the appropriate level of  
25 discipline.

26 Officer Rafferty demonstrated poor judgment first by not confiscating Threadgill's dagger  
27 and, instead, asking him to place it in a storage facility she knew was not open (RT 812:17-  
28 813:13). Officer Rafferty testified that, in hindsight, she would have taken the dagger from



1 Threadgill. (RT 816:9-17.) She also demonstrated poor judgment by directing her trainee,  
2 Officer Ly, to return the dagger to Threadgill's girlfriend so that she could give it back to  
3 Threadgill, a violent felon who was on probation. (RT 815:24-816:5; 819:1-819:21.)

4 **B. THERE IS JUST CAUSE TO SUPPORT DISCIPLINE FOR OFFICER**  
5 **RAFFERTY'S CONDUCT DURING THE JENKS INCIDENT**

6 The RVPD's decision to terminate Officer Rafferty's employment is based on four  
7 misconduct charges relating to the Jenks Incident.

8 **1. Charge One**

9 Charge number one alleges that, on or about September 29, 2018, Officer Rafferty  
10 developed a plan with Officer Ly to arrest Jenks if she called 911. On September 30, 2018, at  
11 0250 hours, Jenks called 911 to report her car alarm going off. Officers Rafferty and Ly  
12 responded to the Jenks residence, and Officer Rafferty acted beyond her lawful authority by  
13 arresting Jenks for violating Penal Code section 653x, a misdemeanor, even though the elements  
14 of the crime did not occur in Officer Rafferty's presence. The arrest was also not pursuant to a  
15 warrant or a citizen's arrest.

16 RVPD alleged that Officer Rafferty violated RVPD policy sections:

17 340.3.5(c) Unsatisfactory work performance including but not limited to, failure,  
18 incompetence, and efficiency or delay in performing and/or carrying out  
19 proper orders, work assignments or instructions of supervisors without a  
reasonable and bona fide excuse.

20 340.3.5(u) Exceeding lawful peace officer powers by unreasonable, unlawful or  
21 excessive conduct.

22 340.3.5(z) Violation of a misdemeanor or felony statute (Penal Code section 146).

23 The Council agrees with Arbitrator Saling that a preponderance of the evidence does not  
24 support the charge that Officer Rafferty violated a misdemeanor or felony statute, or exceeded her  
25 police officer powers by unlawful or excessive conduct. However, the Council rejects Arbitrator  
26 Saling's finding that Officer Rafferty's actions leading to the arrest of Jenks were reasonable and  
27 demonstrated satisfactory work performance.

28 Arbitrator Saling's Decision states, "There was no credible evidence that [Rafferty] and

1 Ly hatched a plan to arrest Ms. Jenks if she made a 9-1-1 call, no matter whether the call was  
2 legitimate or not.” (Decision, p. 45.) The finding is directly contradicted by Officer Ly’s and  
3 Officer Rafferty’s testimony. Officer Ly testified that he had determined that if he and Officer  
4 Rafferty responded to a call from Jenks and there was no evidence of an emergency, then they  
5 were going to arrest Jenks. (RT 621:21-622:3.) Officer Rafferty testified similarly, stating that  
6 they had planned to arrest Jenks if they responded and there was no emergency. (RT 753:8-14.)  
7 Officer Rafferty testified that Commander Tassone had previously told her she should arrest  
8 Jenks in that situation. (RT 749:7-19.) Commander Tassone’s testimony differed, in that he  
9 claimed he stated to a group of officers that they needed to “consider all of our options when  
10 dealing with Ms. Jenks” so that they could stop her frequent 9-1-1 calls. (RT 108:16-109:21.) He  
11 denied ever instructing Officer Rafferty or any other officer to arrest Jenks for abusing the 9-1-1  
12 system. (*Id.*)

13 Other evidence also contradicts the finding that Officers Ly and Rafferty had not  
14 responded to the scene with a predetermined intent to arrest Jenks. Dispatch had advised that they  
15 should warn Jenks about calling 9-1-1 for non-emergencies. (RT 627:13-16; 757:20-23.) At the  
16 scene, Jenks repeated that she believed she was reporting an emergency. Officer Ly responded by  
17 telling Jenks that it “may be an emergency.” Nonetheless, Officers Rafferty and Ly summarily  
18 dismissed Jenks’ characterization of the emergency nature of her 9-1-1 call and proceeded to  
19 arrest her.

20 In addition, because Officers Rafferty and Ly had a preconceived intent to arrest Jenks,  
21 they gave no credence to Jenks’ stated belief that she was calling about a legitimate emergency.  
22 By doing so, they ignored evidence of a mitigating factor (i.e., reasonableness under the  
23 circumstances) contained in Penal Code section 653x, the statute Officers Rafferty and Ly  
24 charged Jenks with violating. If Officers Rafferty and Ly did not find Jenks’ subjective belief to  
25 be objectively reasonable, such information indicates confusion or a potential mental health issue,  
26 rather than an intent to annoy or harass the RVPD by abusing the 9-1-1 system.

27 The predetermined decision to arrest was not reasonable or necessary, and reflected poor  
28 judgment. The arrest also unnecessarily set off a chain of events that led to serious injury.



1 Therefore, the Council finds that a preponderance of the evidence shows Officer Rafferty  
2 engaged in misconduct as charged.

3 The Council also finds mitigating factors present. First, the arrest was not unlawful.  
4 Multiple officers, including Officer Fong, and Sergeants McDowell and Tom testified that they  
5 believe the elements supporting the arrest were present. Second, Jenks had called 9-1-1 multiple  
6 times in the recent past prior to her arrest, and there appeared to be no clear plan from the  
7 Department about how to deal with the calls. Finally, although Officer Rafferty directed or, at  
8 least, persuaded the decision to arrest Jenks, Officer Rafferty was not the arresting officer;  
9 therefore, she alone did not have sole authority to complete or stop the arrest. Other officers at the  
10 scene shared that responsibility.

## 11 **2. Charge Two**

12 Charge number two alleges that, on or about September 30, 2018, Officer Rafferty  
13 completed the Solano County Sheriff Arrest and Detention (A&D) form online and included  
14 false, misleading or distorted information to support a felony charge related to Jenks' arrest. The  
15 A&D form includes a declaration under penalty of perjury, which contains Officer Rafferty's  
16 electronic signature as being true and correct.

17 RVPD alleges that your conduct violated RVPD policy numbers:

- 18 340.3.5(c) Unsatisfactory work performance including but not limited to, failure,  
19 incompetence, and efficiency or delay in performing and/or carrying out  
20 proper orders, work assignments or instructions of supervisors without a  
reasonable and bona fide excuse.
- 21 340.3.5(m) Any knowing or negligent violation of the provisions of the department  
22 manual, operating procedures or other written directive of an authorized  
23 supervisor. The department shall make this manual available to all  
24 employees. Employees should familiarize themselves with this manual and  
be responsible for compliance with each of the policies contained herein.
- 25 340.3.5(p) Failure to disclose or misrepresenting material facts, or the making of any  
26 false or misleading statement on any application, examination form, or  
other official document, report or form or during the course of any work-  
related investigation.
- 27 340.3.5(q) Failure to take reasonable action while on-duty and when required by law,  
28 statute, resolution or approved department practices or procedures.

1           340.3.5(z)    Violation of a misdemeanor or felony statute (Penal Code section 118.1).

2           344.1.1       Employees should ensure that reports are sufficiently detailed for their  
3                        purpose and free from errors prior to submission. It is the responsibility of  
4                        the assigned employee to complete and submit all reports taken during the  
5                        shift before going off-duty unless permission to hold the report has been  
6                        approved by a supervisor. Generally, reports requiring prompt follow-up  
7                        action on active leads, or arrest reports where the suspect remains in  
8                        custody should not be held.

9                        Hand written reports must be prepared legibly. If the report is not legible,  
10                      the submitting employee will be required by the reviewing supervisor to  
11                      properly make corrections and resubmit the report. Employees who dictate  
12                      reports shall use appropriate grammar, as content is not the responsibility  
13                      of the typist. Employees who generate reports on computers are subject to  
14                      all requirements of this policy.

15                     All reports shall accurately reflect the identity of the persons involved, all  
16                     pertinent information seen, heard or assimilated by any other sense, and  
17                     any actions taken. Employees shall not suppress, conceal or distort the facts  
18                     of any reported incident, nor shall any employee make a false report orally  
19                     or in writing. Generally, the reporting employee's opinions should not be  
20                     included in reports unless specifically identified as such.

21           The Council finds that a preponderance of the evidence shows that Officer Rafferty  
22           completed the A&D form online. The form she completed shows that she, not Officer Ly, was the  
23           arresting officer. The form is also electronically signed by Officer Rafferty, under penalty of  
24           perjury, as an acknowledgment that the information in the form is true and correct. Officer  
25           Rafferty does not deny that she completed the form. (RT 780:2-12.) Officer Rafferty testified that  
26           she did so essentially as a courtesy while Officer Ly took Jenks to jail for booking. (RT 780:15-  
27           21.) Sgt. Tom testified that he too has initiated an A&D form on another officer's behalf,  
28           although he has not completed the narrative portion. (RT 252:2-253:24.)

          In the narrative portion of the form, Officer Rafferty wrote the narrative in the first person,  
as if Officer Ly had written it. She included a statement from Officer Ly that based on his  
"training and experience," he knew "a bite from a human can cause serious injury and/or  
infection due to the bacteria and viruses in a human mouth." (City Ex. 63.) She stated in her  
interrogation that she was not aware of Officer Ly's "training and experience" when she wrote the  
narrative. (City Ex. 43, p. 82.) She also never confirmed with him whether the statement was true.  
(RT 859:4-18.) Officer Ly stated in his interview that he had no such training and experience.



1 (City Ex. 42, p. 68.)

2 The Council finds that Officer Rafferty's misstatements in the A&D form were  
3 unintentional and not intended to mislead or distort the truth. The A&D form auto-populates  
4 when an officer logs in (RT 781:4-23), which explains why Officer Rafferty is listed as the  
5 arresting officer and declarant under penalty of perjury.

6 Despite the Council's finding that the misstatements were unintentional, not catching the  
7 misstatements or later verifying their accuracy demonstrates poor judgment and attention to  
8 detail. Minor errors and careless mistakes by police officers can result in major consequences in  
9 criminal proceedings. RVPD Policy 340.3.5(m) prohibits negligent violations of the provisions of  
10 the RVPD manual. Policy 344.1.1 states, "All reports shall accurately reflect the identity of the  
11 persons involved, all pertinent information seen, heard or assimilated by any other sense, and any  
12 actions taken." Accordingly, the Council finds that Officer Rafferty negligently violated Policy  
13 344.1.1 by including misstatements that she failed to verify or correct.

14 As a mitigating factor, the statement regarding Officer Ly's "training and experience" is a  
15 misstatement that Officer Ly should have caught and corrected upon his review.

16 **3. Charge Three**

17 Charge number three alleges that, on or about September 30, 2018, Officers Rafferty and  
18 Ly were directed to go home after their work shift, rest and then complete the crime report related  
19 to the arrest of Jenks. Officer Ly sent his report as a Word document to Officer Rafferty by email  
20 on September 30, 2018. Officer Rafferty removed portions of Officer Ly's report and added her  
21 own language, distorting the observations previously written by Officer Ly and adding new  
22 observations. Officer Rafferty wrote portions of Officer Ly's report describing Officer Ly's fear  
23 and intentions without direction from or a discussion with Officer Ly about these issues. Officer  
24 Rafferty sent the revised word document back to Officer Ly on September 30, 2018. Officer Ly  
25 later copied the revised report directly into the RIMS report writing system.

26 Officer Rafferty also wrote a supplemental report, in which she exaggerated, distorted  
27 details and created false or misleading information within the reports.

28 RVPD alleged that Officer Rafferty violated the following RVPD policies:

- 1           340.3.5(c)     Unsatisfactory work performance including but not limited to, failure,  
2                             incompetence, and efficiency or delay in performing and/or carrying out  
3                             proper orders, work assignments or instructions of supervisors without a  
                               reasonable and bona fide excuse.
- 4           340.3.5(m)     Any knowing or negligent violation of the provisions of the department  
5                             manual, operating procedures or other written directive of an authorized  
6                             supervisor. The department shall make this manual available to all  
                               employees. Employees should familiarize themselves with this manual and  
                               be responsible for compliance with each of the policies contained herein.
- 7           340.3.5(p)     Failure to disclose or misrepresenting material facts, or the making of any  
8                             false or misleading statement on any application, examination form, or  
9                             other official document, report or form or during the course of any work-  
                               related investigation.
- 10          340.3.5(q)     Failure to take reasonable action while on-duty and when required by law,  
11                             statute, resolution or approved department practices or procedures.
- 12          344.1.1        Employees should ensure that reports are sufficiently detailed for their  
13                             purpose and free from errors prior to submission. It is the responsibility of  
14                             the assigned employee to complete and submit all reports taken during the  
15                             shift before going off-duty unless permission to hold the report has been  
                               approved by a supervisor. Generally, reports requiring prompt follow-up  
                               action on active leads, or arrest reports where the suspect remains in  
                               custody should not be held.
- 16                             Hand written reports must be prepared legibly. If the report is not legible,  
17                             the submitting employee will be required by the reviewing supervisor to  
18                             properly make corrections and resubmit the report. Employees who dictate  
19                             reports shall use appropriate grammar, as content is not the responsibility  
                               of the typist. Employees who generate reports on computers are subject to  
                               all requirements of this policy.
- 20                             All reports shall accurately reflect the identity of the persons involved, all  
21                             pertinent information seen, heard or assimilated by any other sense, and  
22                             any actions taken. Employees shall not suppress, conceal or distort the facts  
23                             of any reported incident, nor shall any employee make a false report orally  
                               or in writing. Generally, the reporting employee's opinions should not be  
                               included in reports unless specifically identified as such.

24           Arbitrator Saling found that the evidence does not support that Officer Rafferty  
25           “intentionally and knowingly attempted to falsify a supplemental report to justify the filing of a  
26           felony charge against Ms. Jenks.” He also concluded that the RVPD did not “establish by a  
27           preponderance of the evidence that [Officer Rafferty] has violated Department policy to establish  
28           the Department had just cause to terminate her services with the Department.” (Decision, p. 49.)



1 The Council does not agree with these findings and rejects this portion of the Decision.

2 The evidence establishes that charge number three, as summarized above, is correct.

3 Officer Rafferty revised Officer Ly's report to include information that was not true or consistent  
4 with the video evidence. For instance, Officer Ly's draft report contained the following  
5 description of Mr. O'Reilly's involvement:

6 Jenks' boyfriend opened the front resident door and began questioning officers  
7 regarding Jenks. Officer Rafferty and Officer Fong secured Jenks in handcuffs  
8 while I spoke with Jenks' boyfriend. Refer to officer Rafferty's supplemental  
report.

9 (City Ex. 49, p. 2.)

10 Officer Rafferty revised Officer Ly's report, including his description of Mr. O'Reilly's  
11 involvement. Officer Rafferty wrote the following in Officer Ly's report:

12 Jenks' boyfriend, later identified as David O'Reilly, opened the front door of the  
13 residence and began yelling at us in an aggressive manner. I ordered O'Reilly  
14 several times to go back inside of the residence and close the door but he ignored  
15 my commands. I feared that O'Reilly might attempt to prevent us from taking Jenks  
16 into custody by interfering in the arrest. I was able to place handcuffs on Jenks in  
17 the front of her body to temporarily secure and get her away from the front door,  
where O'Reilly was refusing to comply with commands to go back inside. Officer  
Fong came over and began to assist Officer Rafferty with Jenks while I stepped  
between them and the door where O'Reilly was to speak with him and make sure  
he did not involve himself in the arrest.

18 Refer to Officer Rafferty's report for further details of Jenks' continued resistance.

19 (City Ex. 50, p. 2.)

20 Arbitrator Saling's Decision adds to charge number three, by requiring that the  
21 Department prove Officer Rafferty "intentionally and knowingly attempted to falsify a  
22 supplemental report to justify the filing of a felony charge against Ms. Jenks." Such findings are  
23 unnecessary to conclude that Officer Rafferty violated at least some of the policies cited in charge  
24 number three. For example, RVPD Policy 344.1.1, states that "[a]ll reports shall accurately reflect  
25 the identity of the persons involved, all pertinent information seen, heard or assimilated by any  
26 other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of  
27 any reported incident, nor shall any employee make a false report orally or in writing. Generally,  
28 the reporting employee's opinions should not be included in reports unless specifically identified



1 as such.” Regardless of her motivations, a simple comparison of what Officer Rafferty wrote  
2 regarding Mr. O’Reilly’s involvement with the video evidence reveals that Officer Rafferty’s  
3 description violates Policy 344.1.1.

4 The inconsistencies are supported by evidence beyond a comparison of the revised  
5 reports. Before they wrote their reports, Officers Rafferty, Ly, and Fong were instructed by  
6 Sergeant Tom to “keep it real” and not “overexaggerate the charge” due to the unintentional dog  
7 bite. On October 2, 2018, Sergeant Lisa McDowell emailed Officer Rafferty and told her that she  
8 needed to review the video from the scene and read other reports completed for the Jenks  
9 Incident, “to ensure that there isn’t conflicting information being documented/referenced.” With  
10 respect to Mr. O’Reilly’s involvement, Sergeant McDowell stated that,

11 If you are painting a picture of O’Reily (sic) as having posed a potential threat to officers  
12 while taking Jenks into custody, the video of his displayed behavior needs to match how  
13 you describe it as being in your report. This is not to say O’Reily didn’t pose a threat, or  
14 ‘based on your training and experience’ had the potential to cause harm to any one of you  
15 at any point while your backs were turned, while trying to take Jenks into custody, you  
16 just need to be sure to document it as such. Also, be cautious using words that could be  
17 interpreted differently by different people and, instead, describe their specific actions.

18 Sgt. McDowell’s email confirms that what Officer Rafferty wrote in her report was, at best,  
19 inconsistent with the video of the incident and with other officers’ recollections of the incident.

20 Officer Rafferty also wrote in her supplemental report that Jenks had been warned by  
21 officers that “future use of the 9-1-1 system, without reporting an emergency, would lead to her  
22 arrest.” (City Ex. 24, p.1.) This statement was not true. Officer Rafferty included it based on  
23 what she claims Officer Ly told her about Officer Fong’s prior encounter with Jenks. However,  
24 Officer Fong testified that he never provided Jenks such a warning. (RT 50:17-51:20.) Officer  
25 Rafferty also included in her supplemental report the information she had added to Officer Ly’s  
26 report. Officer Rafferty wrote,

27 While Jenks was fighting with us, a white male adult, later identified as David  
28 O’Reilly, swung open the front door of the residence. The front door was just to the  
right of where I was standing. O’Reilly began yelling at Officer Ly and I to “let her  
go.” O’Reilly’s presence and discontent caused me great concern while we were  
attempting to take a violently resisting Jenks into custody. Officer Ly ordered  
O’Reilly several times to close the door and back away. O’Reilly ignored these  
commands and continued to stand there and yell at us. I feared O’Reilly would try  
to engage us while we were still dealing with a violently resisting Jenks. This



1 caused me to divert my full attention from Jenks as she fought with us while I  
2 continued to keep track of O'Reilly and his movements.

3 (City Ex. 24, p. 2; emphasis added.) This information, as explained above, is not true and is  
4 inconsistent with the video of the incident. Mr. O'Reilly was not yelling at the officers. It is also  
5 inconsistent with other officers' reports regarding the incident. For example, Officer Fong's  
6 report states that O'Reilly "did not appear to be aggressive toward the Officers." (City Ex. 24.)

7 Officer Rafferty argued and Arbitrator Saling found that whether Mr. O'Reilly was yelling  
8 or not had nothing to do with Jenks' arrest; therefore, "even if [Officer Rafferty's] statements  
9 were exaggerated, this did not have an effect on Ms. Jenks' arrest." (Decision, p. 48.) This line of  
10 reasoning suggests that RVPD's policy has exceptions for exaggerations. It also leads one to  
11 wonder why, if the "exaggerations" were immaterial, they were added to Officer Ly's report at  
12 all.

13 The Council finds there is just cause for discipline based on charge three. As with charge  
14 number two above, the Council finds mitigating factors with respect to this charge. While Officer  
15 Rafferty made revisions to Officer Ly's report, Officer Ly could have and should have corrected  
16 his report for accuracy. As result, the Council does not find that this charge warrants termination.

#### 17 **4. Charge Four**

18 Charge four alleges that, on or about November 7, 2018, in violation of a direct order and  
19 Department policy, Officer Rafferty gave false or misleading statements during a formal  
20 interrogation conducted during a RVPD investigation. Specifically, Chief Dailey had ordered  
21 Officer Rafferty to answer questions truthfully. When asked during the interrogation when  
22 photographs were taken of her arm where Jenks had purportedly bit Officer Rafferty, Officer  
23 Rafferty stated that the photograph was taken "several days" after the Jenks Incident. Metadata  
24 showed that the picture had actually been taken the day after the Jenks Incident.

25 RVPD charged Officer Rafferty with violating the following RVPD Policies:

- 26 340.3.5(e) Disobedience or insubordination to constituted authorities, including  
27 refusal or deliberate failure to carry out or follow lawful directives and  
28 340.3.5(ab) Giving false or misleading statements, or misrepresenting or omitting  
material information to a supervisor, or other person in a position of

1 authority, in connection with any investigation or in the reporting of any  
2 department related business.

3 The Council agrees with Arbitrator Saling's conclusion that the preponderance of the  
4 evidence does not show Officer Rafferty deliberately disobeyed Chief Dailey's order to answer  
5 questions truthfully. While Officer Rafferty's answer regarding when she took the photograph  
6 was technically inaccurate (i.e., several days vs. a day later), a preponderance of the evidence  
7 does not show she intended to mislead. Arbitrator Saling was in a better position to make  
8 credibility determinations and did not find Officer Rafferty was intentionally misleading. He also  
9 noted that Sgt. Tom testified that he observed teeth marks on Officer Rafferty's arm when the  
10 photographs were taken, which indicates that Officer Rafferty was not attempting to minimize the  
11 evidentiary value of the photograph by misstating when it was taken.

12 **C. THE COUNCIL REJECTS ARBITRATOR SALING'S FINDING THAT**  
13 **THE RVPD DID NOT USE PROGRESSIVE DISCIPLINE**

14 Despite finding that the City did not prove by a preponderance of the evidence that just  
15 cause exists to discipline Officer Rafferty for the Jenks Incident, the Decision includes a  
16 paragraph on page 51 that discusses the RVPD's alleged failure to use progressive discipline.

17 The Council rejects this portion of the Decision. The RVPD imposed a three-shift  
18 suspension for Officer Rafferty's misconduct related to the Threadgill Incident. The misconduct  
19 was similar in kind to the misconduct related to the Jenks Incident in that it demonstrated poor  
20 judgment. While the suspension had not been recommended until days after the Jenks incident,  
21 the RVPD had commenced an IA investigation into the Threadgill Incident several months before  
22 the Jenks incident.

23 Despite no mention of progressive discipline in the parties' MOU and no legal  
24 requirement to use progressive discipline, the Council finds that RVPD used progressive  
25 discipline. After imposing a three-shift, unpaid suspension, the next progression would be to  
26 impose an unpaid suspension of greater length or termination. The Council has determined that a  
27 15-shift, unpaid suspension is appropriate. The RVPD chose termination. Either choice is  
28 consistent with principles of progressive discipline.



1           **D.       THERE IS NO EVIDENCE TO SUPPORT ARBITRATOR SALING’S**  
2                           **SUGGESTION THAT THE CITY TOOK ACTION AGAINST RAFFERTY**  
3                           **BASED ON HER INVOLVEMENT IN THE RVPOA**

4           Page 37 of the Decision states, “There was no credible evidence presented that clearly  
5 established that [Officer Rafferty’s] and Officer Ly’s discipline was a (*sic*) retaliation for their  
6 work as officers of the [RVPOA]. It is suspect that at the very time that there was an apparent  
7 conflict between Chief Daily (*sic*) and the [RVPOA] that two of its three officers were charged  
8 for alleged violations of department policy and issued discipline.” While the Council agrees that  
9 the evidence does not show that Chief Dailey retaliated against Officer Rafferty based on her  
10 involvement with the RVPOA, the Council, for several reasons, rejects Arbitrator Saling’s  
11 unsolicited suspicion that retaliation may have played a role.

12           First, the parties’ MOU does not grant Arbitrator Saling authority to include suspicions in  
13 the Advisory Opinion and Award. He recognized the scope of his authority in stating the issues he  
14 was to decide on page 5 of the Decision. By including his suspicion, he exceeded his scope of  
15 authority. Second, despite a voluminous record, Arbitrator Saling cites no evidence to support the  
16 purported suspicion. To the contrary, in the sentence immediately preceding the sentence about  
17 his retaliation suspicion, he states that the evidence does not support a finding of retaliation.  
18 Third, the evidence does not support even a suspicion of retaliation. The fact that Officers  
19 Rafferty and Ly were “two of [the RVPOA’s] three officers” and charged with violating RVPD  
20 policy is not coincidental, far-fetched, or suspicious. They worked together and responded to the  
21 same incidents. When the Threadgill Incident occurred, Officer Rafferty was Officer Ly’s FTO.  
22 Significantly, Arbitrator Saling upheld the three-shift suspension stemming from the Threadgill  
23 Incident, finding just cause. Such a finding demonstrates that the discipline was imposed for  
24 legitimate reasons, not for a retaliatory reason. Therefore, a suspicion of retaliation is contrary to  
25 the evidence.

26           **IV.       CONCLUSION**

27           The City Council concludes, based on a preponderance of the evidence presented at  
28 Arbitration, that the City had just cause to discipline Appellant Natalie Rafferty for the Threadgill

1 and Jenks Incidents. The three-shift suspension without pay was the appropriate level of  
2 discipline for the Threadgill Incident. Due to mitigating factors, the Council finds that termination  
3 for the Jenks Incident is too severe. A 15-shift, unpaid suspension, along with removal of FTO  
4 and Officer in Charge duties, is an appropriate level of discipline. Accordingly, the City shall  
5 reinstate Officer Rafferty, effective March 1, 2019. The City has since laid off its police officers;  
6 therefore, the City shall make Officer Rafferty whole as to her lost wages and benefits from  
7 March 1, 2019 to the date the City laid off its last police officer. The City shall deduct from the  
8 back pay the equivalent of 15 shifts, as well as any incentives Officer Rafferty would have  
9 received for performing Field Training Officer and Officer in Charge duties.

10 This decision was passed, approved, and adopted by the City Council of the City of Rio  
11 Vista at the City Council's July 7, 2020 meeting by a vote of 4 Ayes (Mayor Kott, Vice Mayor  
12 Cohn, Councilmember Dolk, and Councilmember Hampton); 0 Noes; 1 Absent (Councilmember  
13 Roos). This decision is final as to all parties, effective as of the date listed below. There is no  
14 administrative procedure for reconsidering this decision. Judicial review may be obtained by  
15 petitioning the Solano County Superior Court for a writ of administrative mandamus pursuant to  
16 California Code of Civil Procedure section 1094.6 within 90 days following the proof of service  
17 attached hereto that lists Officer Rafferty's and her attorney's addresses. Failure to file a petition  
18 within that time frame may result in dismissal of any such litigation.

19  
20 Date: July 7, 2020



\_\_\_\_\_  
RONALD KOTT  
Mayor  
City of Rio Vista